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| 2252 | 7590 | 03/16/2009 | | |
| BIRCH STEWART KOLASCH & BIRCH | | | EXAMINER | |
| PO BOX 747 | | | GERRITY, STEPHEN FRANCIS | |
| FALLS CHURCH, VA 22040-0747 | | | ART UNIT | PAPER NUMBER |
| | | | 3721 | |
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| | | | 03/16/2009 | ELECTRONIC |

Please find below and/or attached an Office communication concerning this application or proceeding.

The time period for reply, if any, is set in the attached communication.

Notice of the Office communication was sent electronically on above-indicated "Notification Date" to the following e-mail address(es):

mailroom@bskb.com

| | | |
|------------------------------|---------------------------------------|--|
| Office Action Summary | Application No. 10/591,799 | Applicant(s) GUSTAFSSON, PER |
| | Examiner Stephen F. Gerrity | Art Unit 3721 |

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --
Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) OR THIRTY (30) DAYS, WHICHEVER IS LONGER, FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If no period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED. (35 U.S.C. § 133).

Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

Status

1) Responsive to communication(s) filed on 13 November 2008.

2a) This action is FINAL. 2b) This action is non-final.

3) Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

Disposition of Claims

4) Claim(s) 1,2,4-18,20 and 21 is/are pending in the application.

4a) Of the above claim(s) _____ is/are withdrawn from consideration.

5) Claim(s) _____ is/are allowed.

6) Claim(s) 1,2,4-10,12-18,20 and 21 is/are rejected.

7) Claim(s) 11 is/are objected to.

8) Claim(s) _____ are subject to restriction and/or election requirement.

Application Papers

9) The specification is objected to by the Examiner.

10) The drawing(s) filed on 06 September 2006 is/are: a) accepted or b) objected to by the Examiner.
 Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).
 Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).

11) The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

Priority under 35 U.S.C. § 119

12) Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).

a) All b) Some * c) None of:

- 1) Certified copies of the priority documents have been received.
- 2) Certified copies of the priority documents have been received in Application No. _____.
- 3) Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

* See the attached detailed Office action for a list of the certified copies not received.

Attachment(s)

1) Notice of References Cited (PTO-892)

2) Notice of Draftsperson's Patent Drawing Review (PTO-948)

3) Information Disclosure Statement(s) (PTO/SB/08)
 Paper No(s)/Mail Date 2/13/09

4) Interview Summary (PTO-413)
 Paper No(s)/Mail Date. _____

5) Notice of Informal Patent Application

6) Other: _____

DETAILED ACTION

Information Disclosure Statement

1. Receipt is acknowledged of an Information Disclosure Statement, filed 13 February 2009, which has been placed of record in the file. An initialed, signed and dated copy of the PTO-1449 form is attached to this Office action.

Specification

2. The specification is objected to as failing to provide proper antecedent basis for the claimed subject matter. See 37 CFR 1.75(d)(1) and MPEP § 608.01(o). Correction of the following is required:

- the language found in claim 1 "wherein base elements of the tools form a substantially continuous section enclosing the rotary tool holder" fails to find proper antecedent basis in the written description; and
- the language found in claim 17, "base elements of the tools form a substantially continuous section enclosing the rotary tool holder" fails to find proper antecedent basis in the written description.

Claim Objections

3. Claim 11 is objected to under 37 CFR 1.75(c) as being in improper form because a multiple dependent claim should refer to other claims in the alternative only -- the recitation "claim 9 or claim 10 when referring back to claim 6" is not deemed to be in the alternative. Furthermore, a multiple dependent claim cannot depend from any other multiple dependent claim -- in this instance multiple dependent claim 11 refers to claim

6 which is also a multiple dependent claim. See MPEP § 608.01(n). Accordingly, the claim has not been further treated on the merits.

Claim Rejections - 35 USC § 102

4. The following is a quotation of the appropriate paragraphs of 35 U.S.C. 102 that form the basis for the rejections under this section made in this Office action:

A person shall be entitled to a patent unless –

(b) the invention was patented or described in a printed publication in this or a foreign country or in public use or on sale in this country, more than one year prior to the date of application for patent in the United States.

5. Claims 1, 2, 4-9, 12, 15, 17 and 20 are rejected under 35 U.S.C. 102(b) as being anticipated by Kawabe (US 4,614,078).

Concerning claims 1 and 17, the Kawabe reference discloses a device and method for producing container blanks including a plurality of tools 34 supported by a rotary tool holder 31; each tool 34 comprises a base element 32 which is fixedly mounted on the tool holder 31 and an engaging element 33 which is pivotable relative to the base element 32, the base elements 32 of the tools 34 form a substantially continuous section enclosing the rotary tool holder 31, the rotary tool holder 31 on rotation being arranged to move each tool along a working path, as seen in fig. 3, along which each tool 34 is engageable with a web material 1b for joining, by sealing, opposite wall portions of the web material 1b along connecting portions defining the container blanks, a return path, as seen in fig. 3, along which each tool 34 is disengageable from the web material 1b; each tool 34 moves with the web material 1b when the tool is moved along the working path; and the tool holder 34 acting as a

deflecting means, as seen in fig. 3 for the web material 1b when they move together along the working path.

Concerning claim 2, as seen in fig. 3, the tool 34 is operable between closed and open positions.

Concerning claim 4, the base element 32 or the engaging element 33 has a respective rib 32a or 33a to engage the web material 1b.

Concerning claim 5, the rib 32a or 33a of each tool 34 has an extent that corresponds to the extent of the connecting portion (where the seal is applied) of a container blank.

Concerning claim 6, as discussed at col. 5, lines 58-65, and as shown in fig. 4, the rib 33a is supported by an arrangement 33, 45, 46 involving springs 48 which when moving the tool to the closed position are arranged for a given compression.

Concerning claim 7, the tool 34 is a heat sealing tool for joining of the web material.

Concerning claim 8, there is a control means (the cam, the cam track) which is arranged to engage the tool 34 with, and disengage the same from, the material web 1b.

Concerning claim 9, as seen in fig. 4, the control means includes a link mechanism 55, 57 and a stationary cam structure 38, and each of the tools 34 being connected to the cam structure 38 by the link mechanism 55, 57, to control opening and closing of the tool 34 - see paragraph bridging columns 4 and 5..

Concerning claim 12, as seen in fig. 4, the tool holder 34 is rotatably mounted on one side.

Concerning claims 15 and 20, the tool holder 34 is arranged for continuous rotation during operation.

Claim Rejections - 35 USC § 103

6. The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negatived by the manner in which the invention was made.

7. Claim 10 is rejected under 35 U.S.C. 103(a) as being unpatentable over Kawabe (US 4,614,078) in view of Grevich et al. (US 4,305,240).

The Kawabe reference does not disclose that the link mechanism includes an articulated link arm which is arranged in an over-centered position. The Grevich et al. reference discloses a similar type of machine and method including a tool 35 which is pivoted between open and closed positions by the use of a link mechanism including an articulated link arm 40 arranged in an over-centered position. It would have been obvious to one having ordinary skill in the art, at the time applicant's invention was made, to have modified the Kawabe machine to have had the link mechanism include an articulated link arm arranged in an over-centered position, as suggested by Grevich et al., as it is routine for a skilled artisan to combine old and well structures in a manner which achieves predictable results.

8. Claims 13, 14, 16, 18 and 21 are rejected under 35 U.S.C. 103(a) as being unpatentable over Kawabe (US 4,614,078) in view of applicant's admitted prior art.

Concerning claims 13 and 14, in the previous Office action the examiner took Official Notice that it is old and well known in the container blank making art to position a punching station either upstream or downstream of a tool holder.

Since applicant has failed to timely challenge the examiner's holding of Official Notice, such holding is now deemed to be applicant's admitted prior art.

It would have been obvious to one having ordinary skill in the art, at the time applicant's invention was made, to have modified the Kawabe machine to have had the punching station be positioned downstream of the tool holder because it is notoriously old and well known to do so, and such would amount to no more than a rearrangement of the parts of the machine, without any criticality being found in the location of the punching station relative to the tool holder. Furthermore, it has been held that rearranging parts of an invention involves only routine skill in the art. In re Japikse, 86 USPQ 70.

Concerning claim 16, in the previous Office action the examiner took Official Notice that it is old and well known in the container blank making art to provide a registering mechanism positioned upstream of the tool holder and adapted to sense the tension in the material web and to adjust tension according to a predetermined value, in order to maintain the tension in the material web at a value conducive to proper sealing of the web material.

Since applicant has failed to timely challenge the examiner's holding of Official Notice, such holding is now deemed to be applicant's admitted prior art.

It would have been obvious to one having ordinary skill in the art, at the time applicant's invention was made, to have modified the Kawabe machine to have provided a registering mechanism positioned upstream of the tool holder and adapted to sense the tension in the material web and to adjust tension according to a predetermined value, in order to maintain the tension in the material web at a value conducive to proper sealing of the material web.

Concerning claim 18, in the previous Office action the examiner took Official Notice that that it is old and well known in the container blank making art to fold a material web longitudinally in the form of a W, dependent on the type of container blank desired.

Since applicant has failed to timely challenge the examiner's holding of Official Notice, such holding is now deemed to be applicant's admitted prior art.

It would have been obvious to one having ordinary skill in the art, at the time applicant's invention was made, to have modified the Kawabe method to have the material web be folded longitudinally in the form of a W, as is known in the art, as a skilled artisan could have had the material web folded in many different manners dependent on the type of container blank desired.

Concerning claim 21, in the previous Office action the examiner took Official Notice that that it is old and well known in relevant art to rotate a tool holder (drum) in an indexing motion.

Since applicant has failed to timely challenge the examiner's holding of Official Notice, such holding is now deemed to be applicant's admitted prior art.

It would have been obvious to one having ordinary skill in the art, at the time applicant's invention was made, to have modified the Kawabe method to have had the tool holder rotated in an indexing motion, because such is old and well known, and no criticality is seen as to whether the tool holder is rotated in a continuous motion or an indexing motion.

Response to Arguments

9. Applicant's arguments with respect to claims 1, 2, 4-18, 20 and 21 have been considered but are moot in view of the new ground(s) of rejection.

Conclusion

10. Applicant's amendment necessitated the new ground(s) of rejection presented in this Office action. Accordingly, **THIS ACTION IS MADE FINAL**. See MPEP § 706.07(a). Applicant is reminded of the extension of time policy as set forth in 37 CFR 1.136(a).

A shortened statutory period for reply to this final action is set to expire THREE MONTHS from the mailing date of this action. In the event a first reply is filed within TWO MONTHS of the mailing date of this final action and the advisory action is not mailed until after the end of the THREE-MONTH shortened statutory period, then the shortened statutory period will expire on the date the advisory action is mailed, and any extension fee pursuant to 37 CFR 1.136(a) will be calculated from the mailing date of

the advisory action. In no event, however, will the statutory period for reply expire later than SIX MONTHS from the date of this final action.

11. Any inquiry concerning this communication or earlier communications from the examiner should be directed to Stephen F. Gerrity whose telephone number is 571-272-4460. The examiner can normally be reached on Monday - Friday from 9:30-6:00.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Rinaldi Rada can be reached on 571-272-4467. The fax phone number for the organization where this application or proceeding is assigned is 571-273-8300.

Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free). If you would like assistance from a USPTO Customer Service Representative or access to the automated information system, call 800-786-9199 (IN USA OR CANADA) or 571-272-1000.

/Stephen F. Gerrity/
Primary Examiner, Art Unit 3721

11 March 2009